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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 KENNETH BROWN,

15 Defendant.

) 15-CR-0005-TOR

) United States' Briefing on
) *Peeples*

16 Plaintiff United States of America, by and through Michelle C. Ormsby,
17 United States Attorney for the Eastern District of Washington, and Stephanie J.
18 Lister and James A. Goeke, Assistant United States Attorneys for the Eastern
19 District of Washington, submits the following briefing on *United States v. Peeples*,
20 630 F.3d 1136 (9th Cir. Mont. 2010).

21 At the conclusion of the hearing on April 27, 2015, this Court requested
22 briefing from the parties regarding *United States v. Peeples*, 630 F.3d 1136; 2010
23 U.S. App. LEXIS 26273 (9th Cir. 2010). In *Peeples* the Ninth Circuit held that:

24 Because the Walsh Act requires the district court to
25 exercise its discretion in applying the mandatory release
26 conditions to each individual's circumstances, and in
27 view of the established principle that a statute should be
28 read to avoid serious constitutional issues, *Peeples*'s
constitutional challenge to the Walsh Act does not
succeed.

1 *Peeples* at 1139.

2 Based on the foregoing and the United States' prior briefing, in the United
3 States' view, this Court remains free under both *Peeples* and *Grady v. North*
4 *Carolina*, — S.Ct. —, 2015 WL 1400850 (March 30, 2015) to impose a GPS
5 search condition as a condition of pretrial release for each Defendant based on the
6 particular facts and charges of each of the cases before the Court. Accordingly, the
7 United States submits that a GPS search condition is necessary to ensure each of
8 the Defendants' appearances, to protect the community, and to ensure each
9 Defendants' compliance with the Court's conditions of release in each of the
10 following cases: *United States v. Terry Michael Grimm*, 2:14-CR-183-TOR;
11 *United States v. Clifford Will Kelsey, III*, 2:15-CR-019-JLQ; *United States v.*
12 *Wayne Orville Morris II*, 2:15-CR-018-JLQ; and, *United States v. Kenneth K.*
13 *Watts* 2:15-CR-029-JLQ. Finally, the United States notes that in *United States v.*
14 *Kenneth K. Watts*, 2:15-CR-029-JLQ, at ECF No. 25, the Court has already denied
15 a similar request by Defendant Watts to be relieved of electronic monitoring as a
16 condition of pretrial release while noting the discretion retained by the Court under
17 *Peeples* to impose electronic monitoring as a condition of pretrial release. ECF
18 No. 25 at 4.

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20 DATED April 28, 2015.

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24 *s/Stephanie J. Lister & James A. Goeke*

25 Stephanie J. Lister
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1 I hereby certify that on April 28, 2015, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification
3 of such filing to the following, and/or I hereby certify that I have mailed by United
4 States Postal Service the document to the following non-CM/ECF participant(s):
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